

ID: CCA_2012080309103626

Number: **201244017**

Release Date: 11/2/2012

Office:

UILC: 469.00-00

From:

Sent: Friday, August 03, 2012 9:10:40 AM

To:

Cc:

Subject: RE:

It is our position that a trust cannot meet the qualifying tests of 469(c)(7)(B) because those tests are intended to apply only to individuals. Only individuals are capable of performing "personal services" (as defined in section 1.469-9(b)(4)), and the statute specifically states that the personal services must be performed by the taxpayer. Section 469(c)(7)(D)(i) provides a separate "gross income" test for closely held C corporations to qualify for treatment under section 469(c)(7), but the statute otherwise does not provide any rules for trusts, estates, or personal service corporations. We believe this position is not only supported by a plain reading of the statute and regulations, but by the legislative history for section 469(c)(7) which explicitly states that this provision is intended to apply to individuals and closely held C corporations. We believe it is clear that trusts, estates, and personal service corporations do not fall within the definition of "individuals" for this purpose.

The case currently before the Tax Court on this issue is Frank Aragona Trust, TL-15392-11.